



**Consumers for
AFFORDABLE
Health Care
COALITION**

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*Advocating the right to health care
for every man, woman and child.*

June 23, 2006

VIA U.S Mail and Electronically

Alessandro A. Iuppa, Superintendent
Attn: Vanessa J. Leon
Docket No. INS 06-900
Maine Bureau of Insurance
34 State House Station
Gardiner, ME 04333-0034

IN RE: REVIEW OF AGGREGATE MEASURABLE COST SAVINGS DETERMINED BY DIRIGO HEALTH
FOR THE SECONDASSSESSMENT YEAR (2007)

Dear Superintendent Iuppa:

Please find enclosed for filing in the above captioned matter, two (2) copies of the following documents from Consumers for Affordable Health Care (C.A.H.C.) :

SUMBITTED BY: Joseph P. Ditré, Legal Counsel to Consumers for Affordable Health Care

DATE: Friday, June 23, 2006


DOCUMENT TITLE: CAHC's Consolidated Reply to MEAHP's, Chamber's, Anthem's, and MADAIT's
Opposition to CAHC Motion For Leave to Serve Informational Request And/Or Present Evidence

DOCUMENT TYPE: Reply

CONFIDENTIAL: No

Thank you for your attention in this matter.

Respectfully submitted,



Joseph P. Ditré, Esq.
Bar Number 3719

Counsel to
Consumers for Affordable Health Care

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**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE**

IN RE: REVIEW OF AGGREGATE)	
MEASURABLE COST SAVINGS)	
DETERMINED BY DIRIGO HEALTH)	CAHC's Consolidated
FOR THE SECOND ASSESSMENT YEAR)	Reply to MEAHP's,
)	Chamber's, Anthem's,
)	and MADAIT's
)	Opposition to CAHC
)	Motion For Leave
)	to Serve Informational
)	Request And/Or Present
)	Evidence
)	
Docket No. INS-06-900)	

The intervenors, MEAHP, MADAIT, Chamber and Anthem, filed objections to CAHC Motion for Leave to Serve Informational Request And/Or Present Evidence. Each of the intervenors' objections mimicked MEAHP's objections, so, in the interests of efficiency and time, CAHC has consolidated its reply herein. In addition, the intervenors, aside from MEAHP, appear to argue that the hearing before the Superintendent is not an adjudicatory hearing and therefore no new evidence may be presented.

The most glaring flaw with the opposition to CAHC's Motion is that the opponents fail to accurately state what transpired before the DHA Board. Contrary to MEAHP's claim that Consumers had "every opportunity" to address the average versus the median issue, MEAHP Opposition at p.3, a review of the record clearly demonstrates that Consumers did not have any meaningful opportunity to address this issue: an issue which turns out to be the fundamental issue in this case.

The Shiels testimony and Exhibit #21 addressing use of the median versus use of the average was not pre-filed¹. Mr. Shiels, in his pre-filed testimony both in Year 2 and in Year 1 (which was appended to Year 2), did not mention this issue. Furthermore, it was the Payors, who had contracted with Mr. Shiels, and recommended to the Dirigo Savings Offset Payment Working Group the use of the compound annual average method, as opposed to using the median. (See CAHC's Intervenor Brief) In fact, any testimony or evidence regarding use of a median was not offered into evidence until the evening of the second, i.e. the last, day of the 2-day proceeding before the DHA Board.

Evidence regarding use of a median in calculating CMAD was only put into evidence after the DHA and Consumers had put in their case on CMAD. (R. at 5169) Furthermore, the point of the Shiels testimony on this subject was to illustrate that by using different years or different measurements of central tendencies (i.e. averages or medians) could produce different results. He did not offer an alternative methodology.

The Hearing Officer did not permit Consumers to recall Mr. Schramm as a witness following the intervenor's case. In fact, the Board determined to bring Mr. Schramm back as a witness to address one limited data issue and did not permit him to testify on any other issue. (R. 5190-5191) Thus, to state that Consumers had "every opportunity" to address this issue is factually incorrect and misleading. Therefore, Consumer's effort to introduce rebuttal to the average v. median issue is not "wildly untimely." The hearing before the Superintendent is the forum in which to introduce evidence that could not have been prepared and introduced during the hearing before the Board. See MEAHP Opposition at p.3.

¹ The Chamber did provide a large set of exhibits to counsel on May 8th, the first of the two days of hearings, and indicated that they might be introducing those exhibits, which includes Chamber Exhibit #21, when they put on their case.

The opponents also argue that the Superintendent should not take additional evidence. *See e.g.* Chamber Opposition at p.4 and Trust Opposition at p.3. However, the Superintendent’s Notice of Pending Proceeding and Hearing, Section IV, provides for a proceeding conducted in accordance with the provisions of the Maine Administrative Procedure Act, 5 M.R.S.A. chapter 375, subchapter IV, i.e. an adjudicatory hearing. If there is to be an adjudicatory hearing then Consumers should have the “right to present evidence and arguments on all issue and at any hearing to call and examine witnesses” 5 M.R.S.A. §9056(2). Moreover, the opponents, in particular Anthem, did not limit their statements before the Superior Court to CMAD but rather referred broadly to “information” that could be added in the proceeding before the Superintendent, which, at that time, they agreed was an adjudicatory proceeding. Attorney Roach on behalf of Anthem said:

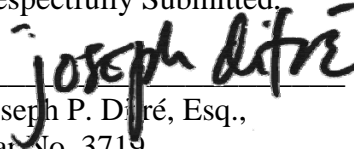
And again, we are not suggesting that they are – we, petitioner Anthem, are not suggesting that they are forever limited by the information that they present by April 1st. There is an adjudicatory process in front of the superintendent that lasts six weeks. There will be prefiled testimony, there will be evidence, there will in all likelihood be some form of discovery. There will then be an adjudicatory process in front of the superintendent, all of that culminating in the superintendent issuing a determination of aggregate measurable cost savings. R. 2944 (CAHC Ex. 1, April 7, 2006, Hearing Transcript, Kennebec Superior Court, Docket No. AP-06-26)

Finally, the opponents argue that to permit the Superintendent to consider testimony related solely to the issue of median v. average would “reopen the complete factual testimony regarding the methodology” Anthem at p.2. That is an incorrect statement of what would occur. The Superintendent can certainly limit testimony to this issue, which was not offered as an alternative methodology and which was not subject to any meaningful opportunity for rebuttal before the DHA Board. Certainly, this issue is a

major issue in this case; to not have any testimony explaining it is unfair to the process and to the public.

In summary, Consumers seek leave to introduce the attached Exhibit 1 and testimony in support thereof.

Respectfully Submitted,



Joseph P. Ditré, Esq.,
Bar No. 3719

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June 20, 2006

Hand-delivered

Ms. Karynlee Harrington, Executive Director
Dirigo Health Agency
211 Water Street
Augusta, Maine 04330

Re: Request for Documents Pursuant to Maine Freedom of Access Law

Dear Ms. Harrington:

This is a formal request for public records pursuant to the Maine Freedom of Access Act, 1 M.R.S.A. §§ 401 et seq. ("FAA"). Your written response to this request is required by law within five (5) working days, pursuant to 1 M.R.S.A. § 409.

We request that the Dirigo Health Agency ("DHA") make available for inspection and copying, pursuant to 1 M.R.S.A. § 408, all "Public Records," as defined below, in the possession or control of the DHA, which relate or pertain to, involve in any way, or which have been produced by or come into the possession of DHA concerning the following:

Any expert analyses and/or reports, produced subsequent to the hearing before the Board and which is relevant to the Board's Decision dated June 6, 2006 regarding the calculation of CMAD, specifically the use of a 3-year median rate of growth as compared to a 3-year average rate of growth as set forth in Chamber Exhibit #21.

We will pay any reasonable copying expense. To the extent that DHA at one time had possession or control of Public Records that are covered by this request, but no longer has possession or control of those materials, please identify any such Public Records.

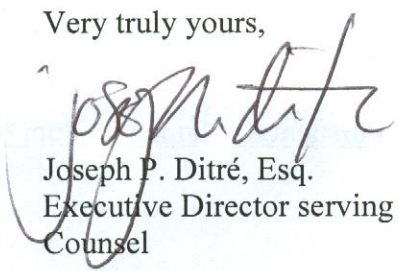
If the DHA objects to the provision of any of these Public Records on the basis that they are not subject to the Freedom of Access Act or otherwise not subject to disclosure, please specify in writing the nature of the materials which DHA refuses to provide and the legal basis for that denial within five (5) days, pursuant to 1 M.R.S.A. § 409.

For purposes of this request, the following terms have the indicated meanings:

1. "Public Record" means public record as defined by 1 M.R.S.A. § 402(3), (3-A), as well as all documents, letters, memoranda, notes, minutes, e-mail (electronic mail), studies (including all data, measurements, estimates, calculations, and/or analysis received, used or produced in conjunction with any study), testing results, data, analysis, measurements, estimates, calculations, workpapers, reports, drafts, telephone logs, message slips or any recordation of messages, photographs, sketches, drawings, and maps produced, received, in the possession or control of DHA whether actually on paper or some other hard copy or contained on some form of computer, magnetic, or optical media (including information on computer hard-drives and backup tapes or CDs) or the like.
2. Dirigo Health Agency means the agency, its staff and its board, councils, commissions, divisions, and bureaus, and all commissioners, employees, consultants and contractors thereof.

Thank you for your cooperation. Please contact me at your first convenience to arrange a reasonable time and place for inspection and copying.

Very truly yours,



Joseph P. Ditré, Esq.
Executive Director serving as Legal
Counsel

pc: Kelly Turner, Assistant Attorney General
William Laubenstein, Assistant Attorney General

[h:/consumerhealthlawprogram/DirigoLegalProceeding2006/CAHCInfoRequest/060620CAHCFOAADHA](http://consumerhealthlawprogram/DirigoLegalProceeding2006/CAHCInfoRequest/060620CAHCFOAADHA)



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
DIRIGO HEALTH AGENCY
211 WATER STREET, 53 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0053

KARYNLEE HARRINGTON
EXECUTIVE DIRECTOR

June 21, 2006

Mr. Joseph P. Ditre, Esq.
Executive Director
Consumers for Affordable Health Care Coalition
39 Green Street
Augusta, Maine 04338-2490

Re: Request for Documents Pursuant to Maine Freedom of Access Law

Dear Mr. Ditre:

This letter responds to your Freedom of Access request addressed to me in my capacity as Executive Director of the Dirigo Health Agency, which was received on June 21, 2006.

Attached please find a copy of a report that was prepared by Mercer, Government Human Services Consulting summarizing the decision made by the Dirigo Board of Directors regarding the Aggregate Measurable Cost Savings for the Second Assessment Year.

Please contact me at (207) 287-9964 with further questions.

Sincerely,

A handwritten signature in cursive script that reads 'Karynlee Harrington'.

Karynlee Harrington

Review of Board's Decision

RE: DETERMINATION OF)
 AGGREGATE MEASURABLE) DECISION
 COST SAVINGS FOR THE SECOND)
 ASSESSMENT YEAR (2007))

At the request of Counsel, Mercer reviewed the Board's decision regarding the determination of AMCS for the Year 2 SOP. The most relevant sections of the Board's decision (dated June 6, 2006) addressing the savings methodology and resulting calculations are covered by:

- III.C.1: Hospital Savings Initiatives (CMAD)
- III.C.2: Uninsured Savings Initiatives (including subsections a,b, and c)
- III.C.3: Certificate of Need and Capital Investment Fund Initiatives (CON/CIF)
- III.C.4: Health Care Provider Fee Initiatives

III.C.1: Hospital Savings Initiatives (CMAD)

Summary

The Board adopted Mercer's methodology but used a growth rate calculated by taking the median growth rate of 4.7% from Chamber Exhibit #21, Table 7. This results in savings of \$14.5 million from CMAD.

Issues/Concerns

Mercer has significant concerns with the Board's use of the median growth rate as opposed to the geometric mean (also commonly referred to as compound annual growth rate) to determine the projected CMAD in Year 2 in the absence of Dirigo to determine whether or not savings occurred. It is not advantageous to the State and not appropriate in our professional opinion.

The mean and the median are the most commonly used measures of a group of measures called measures of central tendency. Measures of central tendency are used to quantify the relationships of a group of numbers into a single number, or said another way, they can be helpful in describing how a group of numbers tend to be related. For purposes of this analysis, Mercer only considered three measures:

- Arithmetic Mean or Simple Average,
- Geometric Mean or Compound Annual Average Growth Rate, or
- Median

Mercer's goal was to use one of these measures to project the actual 2003 CMAD figure forward to 2005. Thus, we wanted to use the measure that has the best predictive value to provide as accurate a future projection as possible. Table 1 below shows the actual values from our CMAD calculations for our baseline period of SFY2000 to SFY2003.

Table 1. CMAD and Annual Percentage Change

Year	CMAD	Percentage Change	Arithmetic Mean	Geometric Mean	Median
2000	\$4,868				
2001	\$5,097	4.72%			
2002	\$5,613	10.12%			
2003	\$5,800	3.32%			
			6.05%	6.01%	4.72%

Table 2 addresses how the various measures are calculated and their predictive properties. In general, the mean and median each have advantages and disadvantages when used to describe data sets. Overall, however, the mean depends on all of the actual values in a data set, but the median is dependent on only one of the actual values and its relative position among the values, not the actual values themselves, and this is extremely important when using either of these measures for their predictive properties.

Table 2. Mean vs. Median: Projecting CMAD Forward

	Arithmetic Mean	Geometric Mean	Median
Calculation	Add the 3 annual percentage increases and divide by 3. $(4.72+10.12+3.32)/3$	Take the cube root of the 3 annual growth factors. Subtract 1 to convert to a percentage increase. $(1.0472 \times 1.1012 \times 1.0332)^{1/3} - 100\%$	Determine which of the 3 percentage increases is where half the values are above and half are below. 10.12 High 4.72 Midpoint 3.32 Low
Result	6.05%	6.01%	4.72%
Role	Tells what the average rate of increase was from 2000 to 2003	Tells the actual compound annual rate of increase from 2000 to 2003	Tells the relative distribution of each of the three years' percentage increase
CMAD Predictive Value for 2003	$\$4,868 \times (1.0605)^3 = \$5,806$	$\$4,868 \times (1.0601)^3 = \$5,800$	$\$4,868 \times (1.0472)^3 = \$5,590$
CMAD Actual	\$5,800	\$5,800	\$5,800

	Arithmetic Mean	Geometric Mean	Median
2003 Value			
Difference	(\$6)	\$0	\$210
Conclusion	The arithmetic mean, based on the actual values, is an excellent predictor of the CMAD actual value for 2003, with an error of only \$6.	The geometric mean, based on the actual values, exactly predicts the CMAD actual value for 2003, with no error (\$0).	The median, which looks only at the relative distribution of the values, is an extremely poor predictor of the CMAD actual value for 2003, with an error of \$210.
Bottom Line	The error using the median is on the order of magnitude of the annual variations in CMAD and so clearly illustrates the inappropriateness of using the median.		

Table 3 shows an example of the shortcomings of the median due to its focus only on the relative position of the values, not on all of the actual values themselves. This example, where the end result for the 2003 CMAD is identical, shows how important it is to use the mean when using either of these measures for their predictive properties.

Table 3. EXAMPLE CMAD and Annual Percentage Change

Year	EXAMPLE CMAD*	EXAMPLE Percentage Change	Arithmetic Mean	Geometric Mean	Median
2000	\$4,868				
2001	\$5,160	6.00%			
2002	\$5,573	8.00%			
2003	\$5,800	4.08%			
			6.03%	6.01%	6.00%

* Example CMAD calculations done using the example percentage change figures in the adjacent column.

Table 4 shows how dramatically the median will shift although the resulting 2003 CMAD is identical to that within the actual SOP Year 2 calculations.

Table 4. EXAMPLE Mean vs. Median: Projecting CMAD Forward

	Arithmetic Mean	Geometric Mean	Median
Calculation	Add the 3 annual percentage increases and divide by 3. (6.00+8.00+4.08)/3	Take the cube root of the three annual growth factors. Subtract 1 to convert to a percentage increase. (1.06x1.08x1.0408) ^{1/3} – 100%	Determine which of the 3 percentage increases is where half the values are above and half are below. 8.00 High 6.00 Midpoint 4.08 Low
Result	6.03%	6.01%	6.00%
Bottom Line	The ending CMAD is identical to the actual 2003 CMAD in this example (\$5,800), yet the median has increased dramatically from 4.72% in the actual to 6.00% in this case. On the other hand, both of the mean calculations have remained essentially unchanged. This example clearly shows the advantage of using the mean – while the median <i>may</i> be a good predictor of the actual values (<i>depending upon the relative distribution of the values</i>), the mean, and especially the geometric mean, by definition will exactly predict the actual value.		

Finally, Dirigo needs to certain to retain the right to update the data. In Year 1 of the SOP, only approximately 3-5% of the data was estimated. If the calculation for SOP in future years is carried out using a timeline similar to this Year 2 process, a significant portion of the data will have to be estimated annually. In Year 2, approximately 20-25% was estimated, although this figure is skewed due to Maine Medical Center's MCR failure to file its latest MCR in a timely manner. To remove any potential bias for or against the savings estimate, the State needs the ability to update the data as the MCRs become available.

III.C.2: Uninsured Savings Initiatives (including subsections a,b, and c)

Summary

The Board adopted Mercer's methodology.

Issues/Concerns

As with CMAD, Dirigo needs to make certain it continually reserves the right to update the data. It is particularly important because using the most recent data used will be the most advantageous to the State. In addition, we have set the precedent of 0% growth rate in all of our calculations based on having insufficient historical data for projecting the

future growth rates. For future calculations, Dirigo should begin using an increasing trend rate to more closely mirror the actual trend in increasing enrollment. The net impact would be to raise the savings estimate slightly and at this point, the State has sufficient data to establish a credible, robust trend line.

III.C.3: Certificate of Need and Capital Investment Fund Initiatives (CON/CIF)

Summary

The Board adopted Mercer's methodology.

Issues/Concerns

This is a new methodology based on the feedback from the Superintendent during the Year 1 process. Again, if the State is required to follow a timeline similar to that used during Year 2, the State needs the right to update savings for the most recent data available, which should become available in late June per the State. An additional savings estimate incorporated for Year 2 was the deferral process – hospitals voluntarily agreeing to defer their project's consideration into future years so as to increase the likelihood of approval using a future year's CIF limits. The State needs to make certain it has a tracking mechanism to identify and treat these deferrals consistently. Also, the State committed to looking at potential offsetting due to overlap in future years savings estimates. We need to be certain to build in a mechanism for the estimate overlap in future years.

III.C.4: Health Care Provider Fee Initiatives

Summary

The Board adopted Mercer's methodology.

Issues/Concerns

This is the identical methodology approved by the Superintendent during the Year 1 process that attributed savings to the appropriate fiscal year.

Certificate of Service

I, Joseph P. Ditré, Esq., certify that the foregoing **Consumers for Affordable Health Care Consolidated Reply to MEAHP's, Chamber's, Anthem's, and MADAIT's Opposition to CAHC Motion For Leave to Serve Informational Request And/Or Present Evidence** was served this day upon the following parties via U.S. Mail and electronically.

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Dated: Friday, June 23, 2006

Respectfully submitted,



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